

The 17th December, 1982

No. 9 (1)82-6Lab./11824.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Sub-Divisional Officer, Ujina Mechanical Sub-Division, Centre Palwal, Kothi No. 946, Sector 15, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 105 of 1981

between

SHRI DEEP CHAND, WORKMAN AND THE MANAGEMENT OF M/S SUB-DIVISIONAL
OFFICER, UJINA MECHANICAL SUB-DIVISION, CENTRE PALWAL, KOTHI
NO. 946, SECTOR 15, FARIDABAD

Present—

Shri Bhim Singh Yadav, for the workman.

Shri P. C. Master, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Deep Chand and the management of M/s Sub-Divisional Officer, Ujina Mechanical Sub-Division, Centre, Palwal Kothi No. 946, Sector 15, Faridabad, by order No. ID/FD/9/81/19016, dated 8th April, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Deep Chand was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties but the management failed to turn up and *ex parte* award was passed by me on 28th August, 1981. Later on the management put up appearance and the award was set aside and the case was tried on merits. On the pleading of the parties, the following issues were framed by order dated 11th June, 1982 :—

- (1) Whether the claimant was a work-charged employee? If so, to what effect?
- (2) Whether the termination of services of Shri Deep Chand was justified and in order? If not, to what relief is he entitled?

And the case was fixed for evidence of the management who examined Shri Ranjit Singh, S.D. O., as MW-1 and the workman examined himself as his own witnesses as WW-1
Issue No. 1

MW-1 deposed that the workman was work-charged operator in his Sub-Division. In cross-examination, he stated that the concerned employee was appointed on 1st March, 1979. He was not issued any appointment letter. WW-1 deposed that he joined service as T-Mate on 1st March, 1979 and was promoted as operator. In cross-examination, he replied that he was not aware if the appointment letter was on work-charged basis.

In Ex. M-2 termination letter, the workman was shown as a temporary workman on Ujina Division Drain Project. In written statement, the management had stated that the workman was a work-charged employee whereas in the rejoinder it was contended that he was employed on permanent basis. The workman has not produced any evidence to controvert the plea of the management. Therefore, I hold that he was temporary workman employed on the project of Ujina Division Drain.
Issue No. 2

MW-1 deposed that the services of the workman was terminated because the work for which he was employed, had been completed. The service of the workman was terminated because he was junior from other workmen. In cross-examination, he stated that he was appointed as T. Mate on 1st March, 1979 and his service was terminated on 31st August, 1980. His service was terminated,—
vide letter Ex. M-2

WW-1 deposed that he was promoted as pump operator. At the time of termination two junior pump operators were retained in the service.

I find from evidence that the workman had only one year and five months service at the time of termination. His service was terminated invoking provision of para 1.129 of P. W. D. Code. On the ratio of cases *Shrimati Satosh Gupta versus State Bank of Patiala* 1980-II-LLJ Page 72 and *Shri Surrinder Kumar Verma versus Central Government Industrial Tribunal* reported in 1981-I-LLJ Page 386, I find that the workman was entitled to retrenchment compensation at the time of termination of his service. Provision of P. W. D. Code cannot override the provision of Industrial Disputes Act, 1947. Provision of section 25-F of the Industrial Dispute Act was mandatory provision. Therefore, the order of termination was bad in law. The workman was therefore, entitled to his reinstatement but because the work had been completed and there was, no place for him on the project, therefore, his reinstatement cannot be effected by the management in these circumstances, it will be in the fitness of things that the workman is paid retrenchment compensation along with notice pay and a sum of Rs. 500 as a cost of proceeding.

M. C. BHARDWAJ,

Dated the 4th November, 1982

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endst. No. 1162, dated 11th November, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9 (1)82-6Lab/11831.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s U. K. Metal Industries, Mukherjee Park, Jagadhri.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 225/1981

between

SHRI AMAR NATH, WORKMAN AND THE MANAGEMENT OF M/S U. K. METAL
INDUSTRIES, MUKHERJEE PARK, JAGADHRI

Present:

Shri Subash Chand, for the management.

Nemo, for the workman.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Amar Nath and the management of M/s U. K. Metal Industries, Mukherjee Park, Jagadhri, by order No. ID/YMN/71/81/32269, dated 3rd July, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services/dismissal of Shri AMAR Nath was justified and in order? If to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed:—

Whether the termination of services/dismissal of Shri Amar Nath was justified and in order? If so, to what relief is he entitled?

And the case was fixed for evidence of the management who examined Shri Tilak Raj Partner as MW-1 and the workman examined himself as his own witness.

MW-1 deposed that the workman was appointed on 1st November, 1978. He used to work on furnace and involved into accident by which his hand became unfit for work. E. S. I. Scheme was enforced in the factory, therefore, the workman got compensation. There was no alternative job for the workman because the unit only employed about 9-10 workers. In cross-examination, he denied the suggestion that the workman went for duty on 20th April, 1981. He admitted that the workman is remained under treatment from 15th November, 1978 to 19th April, 1981. He received his wages from the E. S. I. He was marked absent upto 31st January, 1978 and finally his name was struck off.

The concerned workman deposed that he met with accident on 15th November, 1978. The management got him admitted in E. S. I. Hospital. He remained under treatment upto 20th April, 1981. He received his fitness certificate from the hospital and reported for duty but he was not taken on duty by the management. He received his wages from E. S. I. upto 20th April, 1981. In cross-examination he stated that when working on furnace his left hand got burnt with which he is unable to do any work. The fingers of the hand also became unfit for work. He was receiving pension at the rate of 210/- per month from E. S. I. whereas his wages in the factory amounted to Rs. 400/- per month. He had worked into factory only for 1 and half month.

There was none present for the workman at the time of argument, therefore, *ex parte* argument from the management heard. It was contended that the workman was unfit for the work. There was no light job for the workman in the factory.

I have considered the facts of the case and find that the workman was involved into accident after 1 and half months of service. He remained under treatment of E. S. I. for about two years and received his wages from E. S. I. At present he was receiving disability pension at the rate of 210/- per month. The management struck off the name of the concerned workman from rolls knowing fully well that he was in E. S. I. Hospital for treatment of burns suffered while on duty. It is well established law that striking off name amounted to termination as held in 1978-I-LJJ, page 1. The workman was under treatment of E. S. I. and section 78(1) of the E. S. I. Act 1948 provides:—

“No employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.”

Secondly the contention of the management that the workman had only a few months service was also no help to it because the workman was under E. S. I. treatment for two years and produced fitness certificate Ex. W-1, dated 20th April, 1981. Definition of continuous service was given in section 25-B of the Industrial Disputes Act, 1947. Section 25 provides:—

- “(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman ;
- (2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer:—
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—
 - (i) one hundred and ninety days in the case of workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case ;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days in any other case."

Therefore, the workman was deemed in service for two years. The termination of the service was bad for violation of section 73 of the E.S.I. Act and also for non-compliance of section 25-F of the Industrial Disputes Act as held in *Shrimati Santosh Gupta Vs. State Bank of Patiala 1980-I-LLJ*, Page 72. As a result of my above discussion, I find that the termination of the service of the concerned workman was bad in law. Therefore, he was entitled to reinstatement with full back wages.

Dated, the 2nd November, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1169, dated the 14th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 23rd December, 1982

No. 9(1) 82-6 Lab./12310.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Roadways Rohtak :—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER,
LABOUR COURT, HARYANA, ROHTAK

Referende No. 50 of 1981

between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF HARYANA
ROADWAYS, ROHTAK

Present :—

Shri S. N. Vats, for the workman.
Shri S. C. Singal for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide is order No. ID/RTK/138-60/64810—13, dated 23rd December, 1983 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Om. Parkash, workman and the management of Haryana Roadways, Rohtak. The term of the reference was :—

Whether the termination of services of Shri. Om Parkash, s/o Shri Man Singh was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference, notices as usual, were sent to the parties. The parties put in their appearance through their authorised representative in response to the same on 2nd April, 1981. The parties filed their respective pleadings on the basis of which the following issues were framed :—

- (1) Whether the domestic enquiry conducted by the management was fair and proper and the workman was given full opportunity?
- (2) Whether the reference is bad for latches?
- (3) As per the term of reference?

Issue Nos. 1 and 2 were treated as preliminary. The parties led their evidence on these issues. The management examined Shri Gopal Dass Tuteja, Chief Accounts Officer, Sugar Mills Panipat and Shri Pawan Kumar, Clerk, Haryana Roadways, Rohtak as their witnesses. The workman examined himself as his only witness and closed his case. I heard the learned representatives of the parties

and have also gone through the evidence documentary as well as oral present on the file and decide the issues as under :—

Issue No. 1—

The workman assailed the fairness and propriety of the enquiry on the grounds that he was not supplied the copy of the complaint. Other documents with the final show-cause notice were not supplied nor the copy of the enquiry report. The charges levelled against him were false, concocted and imaginary and were not proved as there was no evidence with the management to prove the same. The Enquiry Officer was not impartial at the time of enquiry and there was no Presenting Officer conducting the case of the management. The General Manager did not explain why he did not agree with the report of the Enquiry Officer and had already made up his mind to terminate his services. The conclusions of the General Manager were so perverse, arbitrary and capricious that no reasonable person could have arrived at on the basis of the material record.

MW-1 Shri Gopal Dass Tuteja deposed that he was posted in the Haryana Roadways, Rohtak as Assistant Accounts Officer from 1977 to 1981. He was appointed Enquiry Officer in case of Shri Om Parkash, workman.—vide letter Ex. MW-1/1 and he proved from the enquiry record that he gave full opportunity to the workman of cross-examination and defence at each and every stage of the proceedings. The witness admitted in his cross-examination that no one produced the charge-sheet and the reply of the workman to the charge-sheet, the list of witnesses and the copy of the complaint in the presence of the workman. He did not mention this fact in the enquiry proceedings that what ever record was asked by the workman was shown to him.

MW-2 Shri Pawan Kumar deposed that he had been working on the Conductor seat. He had brought the enquiry file of the workman and proved the documents from Ex. MW-2/1 to MW-2/17.

The workman deposed that he was appointed in November, 1976. His services were terminated on 25th October, 1979. He received the charge-sheet, replied the same and the Accountant was appointed the Enquiry Officer. He received a letter from the Enquiry Officer and appeared on the date fixed but the Inspector was not present. He gave in writing that the statements of both him the Inspectors may be recorded the same day and not on different days. The Enquiry Officer held him not guilty. He admitted in his cross-examination that he cross-examined the complainant Inspectors who appeared as management witnesses and he signed on the proceedings. He also admitted that he produced one witness in his defence whose statement is Ex. MW-1/5.

From the evidence of the parties and from the record of the enquiry proceedings it is proved that the Enquiry was fair and proper, and the workman was given full opportunity of defence and also of cross-examination. The findings of the Enquiry Officer are also not perverse. This issue is accordingly decided in favour of the management.

Issue No. 2—

The management has led no evidence on this issue nor the same was pressed during the course of arguments. The same is accordingly decided against the management.

Issue No 3—

The General Manager has disagreed with the findings of the Enquiry Officer,—vide his note Ex. MW 2/7 but the same is not based on the material on record. It has been proved that the Inspectors had quarrelled with the workman and the statements of the Inspectors before the Enquiry Officer do not substantiate the facts given in the complaint Ex. MW-2/1. While in the complaint they have given that the workman instigated the passengers who caught hold of him and snatched away the reissued tickets. They have again given in the complaint that the workman refused to give the way bill to them and the workman gave the way bill and old tickets to one of the passengers and made him run away. The Inspector Shri Zile Singh has given in his cross-examination that when they tried to compare the number of the tickets from the passengers who were getting down from the bus with the way bill, the Conductor snatched away the tickets and the way bill from their hands all of a sudden which is contradictory to the version given in complaint. In my opinion there is no evidential material justifying the conclusion reached by the General Manager in his note disagreeing with the report of the Enquiry Officer and the same is perverse, arbitrary and capricious as no reasonable person would have reached the same under the same circumstances. The show-cause notice based on the disagreeing note MW-2/7 is also vitiated which forms the basis of termination. The termination under these circumstances cannot be held to be justified and proper. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated, the 19th November, 1982.

BANWARI LAL DALAL

Presiding Officer,

Labour Court Haryana, Rohtak.

Endorsement No. 2616, dated 20th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court Haryana, Rohtak.